

**GUJARAT APPELLATE AUTHORITY FOR ADVANCE RULING**  
**GOODS AND SERVICES TAX**  
**D/5, RAJYA KAR BHAVAN, ASHRAM ROAD,**  
**AHMEDABAD – 380 009.**



ADVANCE RULING(APPEAL) NO. GUJ/GAAR/APPEAL/ 2024 /08  
 (IN APPLICATION NO. Advance Ruling/SGST&CGST/2022/AR/05)

Date ~~30~~ 12.2024

Name and address of the appellant	:	M/s. Suzlon Energy Ltd., 5, Suzlon House, Nr. Shri Krishna Centre, Navrangpura, Ahmedabad, Gujarat
GSTIN of the appellant	:	24AADCS0472N1Z8
Advance Ruling No. and Date	:	GUJ/GAAR/R/2022/16 dated 12.4.2022
Jurisdiction Office	:	Center Commissionerate – Ahmedabad South Division-VI - Vastrapur, Range - IV
Date of appeal	:	18.05.2022
Date of Personal Hearing	:	15.10.2024
Present for the appellant	:	Shri Dhruvank Parikh, CA

At the outset we would like to make it clear that the provisions of the Central Goods and Services Tax Act, 2017 and Gujarat Goods and Services Tax Act, 2017 (hereinafter referred to as the 'CGST Act, 2017' and the 'GGST Act, 2017') are *pari materia* and have the same provisions in like matter and differ from each other only on a few specific provisions. Therefore, unless a mention is particularly made to such dissimilar provisions, a reference to the CGST Act, 2017 would also mean reference to the corresponding similar provisions in the GGST Act, 2017.

2. The present appeal has been filed under Section 100 of the CGST Act, 2017 and the GGST Act, 2017 by Suzlon Energy Ltd., (hereinafter referred to as 'appellant') against the Advance Ruling No. GUJ/GAAR/R/2022/16 dated 12.4.2022.

3. Briefly, the facts are enumerated below for ease of reference:

- The appellant is engaged in supply of goods required for setting up of power projects enabling generation of power through renewable sources of energy on its own & through its subsidiary companies;
- Appellant manufactures Wind Operated Electricity Generators [WOEG] falling under chapter 85023100; parts like Nacelle, Blades &



Towers falling under chapter heading 8503; transformers falling under chapter heading 8504.

- Transformers for WOEG is installed on the ground adjoining WOEG & is a device to link the electricity generated by the WOEG to the distribution grid and make it usable for distribution/consumption;
- The appellant feels that the transformers are specially/specifically designed to be used along with WOEGs & is therefore to be treated as part of WOEG.

4. In view of the foregoing facts, the appellant had sought Advance Ruling on the following questions, viz:

*The specially designed Transformers for Wind Operated Electricity Generators which are meant to perform dual function of Step Down and Step Up manufactured by Suzlon and supplied to the customers of Suzlon as a part of Wind Operated Electricity Generator be treated as part of Wind Operated Electricity Generator and falls under Sr. No. 234 in Schedule-I to Notification No. 01/2017-Central Tax (Rate) dated 28th June, 2017 read with Notification No. 1/2017- State Tax(Rate) dated 30th June, 2017 and liable to Central GST at the rate of 2.5% along with Gujarat State GST at the rate of 2.5% up to 30th September, 2021 and 6% each towards CGST and SGST with effect from 1st October, 2021 by virtue of omission of the said entry and addition of Entry No. 201A to Notification No. 01/2017-Central Tax (Rate) dated 28th June, 2017 vide Notification No. 08/2021-Central Tax (Rate) dated 30th September, 2021 read with Notification No. 08/2021- State Tax(Rate) dated 30th September, 2021?*

5. Consequent to hearing the applicant, the Gujarat Authority for Advance Ruling [GAAR], recorded the following findings viz

- that a system includes devices and not just a generator in terms of judgement in the case of <sup>1</sup>Belectric Photovoltaic India P Ltd;
- that WOEG however, is a generator & hence is different from wind power project/wind turbine system;
- that there is no scope to include transformer as a part of WOEG;
- that transformer is not a constituent of WOEG;
- that WOEG which is a generator in itself & the use of transformer is to link the WOEG's electricity generated to the distribution grid;
- that wind mill is a powered machine to convert wind energy into mechanical energy; that if a stepdown transformer is additionally attached to a wind mill for it to function, that does not make transformer a part of wind mill; that dual function of the transformer does not equate itself to be treated as a part and parcel of WOEG;
- that the word used in the notification is WOEG and not wind turbine system/wind power system/wind turbine project;

<sup>1</sup> 2019 (21) GSTL 39 (MP)



- that CBIC circular dated 20.10.2015, listed parts of WOEG, wherein *transformer* does not find a mention;
- that transformers connect/link WOEG to distribution network; that there is nothing on record to substantiate that transformer is an inalienable part of WOEG;
- that transformers are neither placed in nacelle nor tower but are placed on the ground beside the WOEG;
- that WOEG *per se* is capable of generating electricity with wind;
- that the appellant is supplying transformers directly to the recipients on principal to principal basis and not on bill to ship basis.

6. The GAAR, vide the impugned ruling dated 18.10.2021, held as follows

#### RULING

1. Transformers are not part of WOEG and are leviable to CGST @ 9% vide Sr. No. 375 of Schedule-III of Notification No. 1/2017-CT (Rate) dated 28-6-2017.

7. Aggrieved by the aforesaid advance ruling, the appellant is before us, raising the following contentions, *viz*

- impugned order erred in holding that in the case of Enercon India, the matter was remanded back; in-fact in the said case the Hon'ble SC allowed the appeal while holding that transformers are vital parts of a windmill;
- the impugned order failed to look at the transformer from the angle of general principles of interpretation; that they should also be understood by their popular meaning/common parlance principle;
- that WOEG and Wind Turbine system are used interchangeably; that there is no difference between the two;
- the appellant never expected any ruling considering the same as a composite supply;
- that had the transformer been placed in the Nacelle or the tower, the benefit of the notification would have been allowed;
- that though the transformer placed adjacent to the WOEG, is doing the same function performed by Turbine step up transformer [which is usually installed in the Nacelle] but since it is placed adjoining to WOEG, it has not been considered as a part of the WOEG;
- that the transformer supplied are an inevitable component of the entire WOEG; that WOEG is of no use if the electricity generated cannot be put to use by the end customer.

8. Personal hearing in the matter was held on 15.10.2024, wherein Shri Dhruvank Parikh, CA, appeared on behalf of the appellant and reiterated the grounds of appeal.

9. We have carefully gone through and considered the appeal papers, written submissions filed by the appellant and submissions made at the time of personal hearing, the Advance Ruling given by the GAAR and other materials available on record.

10. The primary issue to be decided is whether the specially designed transformers for WOEG which perform dual function of Step Down and Step Up manufactured by the appellant and supplied to the customers as a part of WOEG be treated as part of WOEG and the rate of duty.

11. Before dwelling on to the issue, we would like to reproduce relevant portions of circular/clarification & the exemption notification for ease of reference viz

➤ Circular No. 1008/15/2015-CX dated 20.10.2015

3. Ministry of New and Renewable Energy had earlier clarified to CBEC on the subject that the following are parts of Wind Operated Electricity Generators.

i) Tower which supports the nacelle and rotor assembly of a wind operated electricity generator.

ii) Nacelle which consists of gear-box, generator, yaw components, flexible couplings, brake hydraulic, brake calipers, sensors, nacelle plate, nacelle cover and other smaller components.

iii) Rotor consists of blades, hub, nosecone, main shaft, special bearings.

iv) Wind turbine controller, nacelle controller and control cables.

4. In view of the judgement of Hon'ble Supreme Court and clarification received from the administrative ministry, parts/components referred in Para 3 above may be treated as parts and components of wind operated electricity generators eligible for exemption under serial no. 332 of Notification No. 12/2012-Central Excise, dated 17.03.2012.

5. For any clarification regarding parts and component of WOEG, not covered in para 3 above, opinion of Ministry of New and Renewable Energy would be sought by the Board, if required. Issues relating to exemption of parts and components of WOEG not covered in para 3 above may be referred to Board through the Chief Commissioner concerned, if required.

6. Difficulty experienced, if any, in implementing the circular should be brought to the notice of the Board. Hindi version would follow.

**Subject: Clarification regarding tower and blades constitute an essential component of Wind Operated Electricity Generators (WOEG)-reg.**

A large number of references have been received from the trade as well as the field formations to clarify whether exemption Notification No. 12/2012-Central Excise, dated 17.03.2012 covers part/components of Wind Operated Electricity Generators (WOEG). References have been received in relation to tower, tower doors, blades and electrical boxes.

2. The matter has been examined. In the aforesaid notification serial no. 332 read with List 8 exempts Wind operated electricity generator, its component and parts thereof including rotor and wind turbine controller from Central Excise duty. In this regard, attention is invited to the judgement of Hon'ble Supreme Court dated 13th August, 2015 in case of M/s Gemini Instratecs Vs Commissioner of Central Excise, Nashik in Civil Appeal No. 1218 of 2006, wherein Hon'ble Apex Court (while deciding the eligibility of wind mill doors and electrical boxes of WOEG for exemption) has held that-

*"It is not in dispute that as far as windmill doors or tower doors are concerned, it is a safety device which is used as security for high voltage equipments fitted inside the tower, preventing unauthorized access and preventing entries of reptiles, insects, etc, inside the tower. This, according to us, would be sufficient to make it part of electricity generator. We further find that this was so held by the Commissioner of Central Excise and Customs, Raipur in order in original dated 28.02.2005 as well as by the Commissioner (Appeals), Raipur vide his order dated 10.02.2003. The said orders were accepted by the Revenue as it is recorded by the CESAT that the Revenue could not produce any evidence to show that those orders were challenged by it. Further, since the tower is held as part of the generator, door thereof has to be necessarily a part of the generator. We, therefore, are of opinion that there is no case of interference made out by the Department.*

*The appeal is accordingly dismissed"*



➤ **CBEC Minutes of Tariff Conference held on 28<sup>th</sup>/29th October, 2015 issued vide instruction F.No. 96/85/2015-CX.I dated 07-12-2015.**

***B.16 -Vadodara Zone- Scope of Exemption- parts of wind-mill :***

***Issue:***

*There exists ambiguity regarding exemption to parts of wind-mill in light of Tribunal's order in the case of M/s. Gemini Instratech Pvt. Ltd. V/s. Commissioner of C. Ex., Nashik [2014(300)ELT 446 (Tri-Mumbai)]. On the other hand, Hon'ble Supreme court in case of M/s. Corporation Ltd. V/s. Commissioner of C.Ex., Calcutta [2006 (203) ELT 362 (S.C.)] had held that insulated wires and cables are not parts of wind mill which is complete in itself without electric cables, although wind mill may not be able to function without these cables, hence the benefit of exemption is not available to Cables and wires. Further, in case of M/s. Enercon (India) Ltd., Authority of Advance Ruling had ruled that entry "Wind Operated Electricity Generator" covers the generator per-se and it is not intended to include equipments which are deployed with the generator for production of electricity. The sponsoring zone was of the view that the towers and others parts, which are not directly related to generation of electricity would not be eligible for exemption. In view of the sponsoring zone, it would be desirable that the list of equipments/parts/components eligible for exemption may be spelt out in the Exemption Notification.*

***Discussion & Decision***

*It was noted in the conference that a clarification has already been issued on 20.10.2015 vide Circular No. 1008/18/2015-CX by the Board wherein details of parts on which exemption is available is specified. Ministry of New and Renewable Energy had clarified to CBEC that tower, nacelle, rotor, turbine controller are parts of wind turbine and accordingly the circular has been issued clarifying that exemption is available to these parts. For details, the above noted circular may be referred.*

➤ **Notification No.1/2017-Central Tax(Rate), the 28.06.2017**

**Schedule I – 2.5%**

S. No.	Chapter / Heading / Sub-heading / Tariff item	Description of Goods
(1)	(2)	(3)
234.	84 or 85	Following renewable energy devices & parts for their manufacture (a) Bio-gas plant (b) Solar power based devices (c) Solar power generating system (d) Wind mills, Wind Operated Electricity Generator (WOEG) (e) Waste to energy plants - devices (f) Solar lantern - solar lamp (g) Ocean waves tidal waves energy devices plants

➤ **Notification No.8/2021-Central Tax(Rate), the 30.09.2021**

In the said notification, -

(a) in Schedule I – 2.5%, -



(b) in Schedule II – 6<sup>th</sup> a. -

(i) against S. No. 80A, in column (3), for the entry, the following entry shall be substituted, namely: -

“Bio-diesel (other than bio-diesel supplied to Oil Marketing Companies for blending with High Speed Diesel)”;

(ii) S. No. 122 and the entries relating thereto shall be omitted;

(iii) S. Nos. 127 to 132 and the entries relating thereto shall be omitted;

(iv) after S. No. 201 and the entries relating thereto, the following S. No. and entries shall be inserted, namely: -

“201”	<p>84, 85 or 94 Following renewable energy devices and parts for their manufacture:-</p> <p>(a) Bio-gas plant;</p> <p>(b) Solar power based devices;</p> <p>(c) Solar power generator;</p> <p>(d) Wind mills, Wind Operated Electricity Generator (WOEG);</p> <p>(e) Waste to energy plants / devices;</p> <p>(f) Solar lantern / solar lamp;</p> <p>(g) Ocean waves/tidal waves energy devices plants;</p> <p>(h) Photo voltaic cells, whether or not assembled in modules or made up into panels.</p> <p>Explanation:- If the goods specified in this entry are</p>
	<p>supplied, by a supplier, along with supplies of other goods and services, one of which being a taxable service specified in the entry at S. No. 38 of the Table mentioned in the notification No. 11/2017-Central Tax (Rate), dated 28<sup>th</sup> June, 2017 [G.S.R. 690(F)], the value of supply of goods for the purposes of this entry shall be deemed as seventy per cent. of the gross consideration charged for all such supplies, and the remaining thirty per cent. of the gross consideration charged shall be deemed as value of the said taxable service.”;</p>

12. The first averment which needs to be addressed is whether specially designed transformers for WOEG, which perform the dual function of *step down* and *step up*, supplied by the appellant along with WOEG, should be treated as a part WOEG or otherwise. GAAR has relied on circular No. 1008/15/2015-CX dated 20.10.2015, issued by CBIC consequent to seeking clarification from Ministry of New and Renewable Energy, on the items which would constitute parts of WOEG. The GAAR has also relied on the Minutes of the Tariff Conference, held consequent to the issue of the aforementioned clarification, wherein the same was reiterated. As is evident, transformers have not been included as parts of WOEG by the Ministry of New and Renewable Energy and hence, the contention of the appellant that they are parts of WOEG is not a legally tenable argument.





13. The next averment is that GAAR failed to examine the transformer from the angle of general principles of interpretation & that they should be understood by their popular meaning/common parlance principle. We find that the appellant has not produced any material before us which could lead us to a conclusion that *transformer* in terms of their popular meaning/common parlance principle, are part of WOE:G. Further, when the concerned Ministry itself has not included transformer to be a part of the WOE:G, the reliance on popular meaning, etc., is not a plausible argument.

14. The next averment of the appellant is that the GAAR erred in holding that the order in the case of Enercon India Ltd, *ibid*, is not applicable; that the matter has not been remanded back to the assessing officer but instead the appeal stands allowed by the Hon'ble Apex Court. We have read the order dated 8.3.2016 in CA No. 1954/2006, passed by the Division Bench of the Hon'ble Supreme Court. The matter in-fact was remanded by the first appellate authority, which was upheld by both the Hon'ble Tribunal and the Hon'ble High Court. The aforementioned order dated 8.3.2016, is passed in an appeal against the order of the Hon'ble High Court. What is forthcoming is that the dispute in the said case was whether M/s. Enercon (I) Ltd, would be eligible for exemption u/s 8 read with the 5<sup>th</sup> Schedule of the Karnataka Sales Tax Act. It is in this background that said orders needs to be read. The relevant portion of the order, is reproduced below for ease of reference

*The High Court after taking note of the provisions of Section 8 and Entry 57 has observed that meaning of the words "Wind Mills" is not defined under the Act and, therefore, some meaning has to be assigned to the same. It has further observed that since Section 8 of the Act exempts certain categories of "goods" which are specified in the Fifth Schedule of the Act, it is only those items which qualify as goods are to be exempted. Thereafter, an endeavour is made to point out what would be the goods falling within the expression "Wind Mill". It has held that the expression "Wind Mill" would include rotor consisting of blades, the hub assembly; nacelle; yaw system, tower and grid synchronization 5 assembly including transformer unit for delivering the power to the grid net work. It is also opined that the electrical work and transformers are vital parts of a wind mill and the wind mill cannot be put to use and it would not be functional device without the electrical works and the transformers and, therefore, they would also be recorded as parts of wind mill. However, the High Court has come to the conclusion that insofar as foundation work etc. is concerned that would not be exempted as it does not fall within the meaning of wind mill. It is the validity of this part of the order which calls for our attention.*

*After hearing the learned counsel for the parties, we are of the opinion, that a fundamental mistake which is committed by the authorities below is that foundation*



*work or installation work, which is even considered as part of works contract by the Assessing Officer himself, cannot be treated as "goods". Even if we proceed on the basis that such work does not fall within the expression "Wind Mill", still it could not be treated as goods which could be exigible to sales tax under the Act. As pointed out above, the Assessing Officer himself classified such goods involved in execution of works contract. Once this was the opinion of the Assessing Officer and the part of work viz. foundation or erection work related to works contract, on this ground itself, no sales tax could have been charged thereon. We have also pointed out above that even the First Appellate Authority proceeded on the basis that the work like foundation work, electrical work, commissioning etc. was "series of activities and further that it was indivisible". On this finding as well, no further action to levy sales tax was required.*

[emphasis supplied]

The aforementioned order of the Hon'ble Supreme Court is on an entirely different aspect, relating to a different law and to an exemption, which incidentally is not a dispute in the present proceeding. The findings of the Hon'ble High Court, as quoted *supra* and of the Supreme Court are *qua* the Act and the exemption in question. In view of the foregoing, the appellant's averment relying on the above judgement that the specially designed transformers for WOEG, which perform dual function of step down and step up, should be treated as a part WOEG, is not legally tenable.

15. The appellant we find has relied upon many case laws to substantiate his argument, some of which are as under *viz*

- (i) Sonai Engineering P Ltd<sup>2</sup>
- (ii) Parry Engineering Electronics Ltd<sup>3</sup>
- (iii) Precicast P Ltd & Western Precicast P Ltd & VTM Ltd [citation not mentioned]
- (iv) CTR Manufacturing Industries Ltd<sup>4</sup>

These are judgements pertaining to the Income Tax Act. A bare reading would reveal that the dispute in a majority of the cases pertained to depreciation. Depreciation not being an issue in the present appeal, we do not find the case laws applicable as far as the present appeal is concerned. In-fact, we would like to substantiate our finding, by quoting the relevant extracts of the judgement of the Hon'ble Supreme Court in the case of Deepak Bajaj [WP (Cri) No. 77/2000], wherein it was held as follows:

<sup>2</sup> 2014 (8) TaxCorp (AT) 37915 (Pune)

<sup>3</sup> Tax Appeal 604/2012 Gujarat High Court

<sup>4</sup> 2016 TaxCorp (DT) 64961 (HC Bombay)





7. It is well settled that a judgment of a Court is not to be read mechanically as a Euclid's theorem nor as if it was a statute.

8. On the subject of precedents Lord Halsbury, L.C., said in *Quinn vs. Leatham*, 1901 AC 495:

*"Now before discussing the case of Allen Vs. Flood (1898) AC 1 and what was decided therein, there are two observations of a general character which I wish to make, and one is to repeat what I have very often said before, that every judgment must be read as applicable to the particular facts proved or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but are governed and qualified by the particular facts of the case in which such expressions are to be found. The other is that a case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically from it. Such a mode of reasoning assumes that the law is necessarily a logical Code, whereas every lawyer must acknowledge that the law is not always logical at all."*

*We entirely agree with the above observations.*

16. We concur with the findings of the GAAR in para 38.3 of the impugned ruling, so far as it states that WOE:G as used in the notification no. 1/2017-CT (Rate), *ibid*, would not include the specially designed transformer. Even otherwise, it's a trite law that exemption notifications are to be interpreted strictly. We substantiate this finding, by relying on the judgement of the Constitution Bench of the Hon'ble Supreme Court in the case of Dilip Kumar and Company [2018 (361) ELT 577 (SC)] wherein the Court held as follows viz [relevant extracts]

52. To sum up, we answer the reference holding as under -

(1) Exemption notification should be interpreted strictly; the burden of proving applicability would be on the assessee to show that his case comes within the parameters of the exemption clause or exemption notification.


(2) When there is ambiguity in exemption notification which is subject to strict interpretation, the benefit of such ambiguity cannot be claimed by the subject/assessee and it must be interpreted in favour of the revenue.


(3) The ratio in *Sun Export case (supra)* is not correct and all the decisions which took similar view as in *Sun Export case (supra)* stands overruled.

17. We therefore, hold that the specially designed transformers for WOE:G, which perform dual function of step down and step up, supplied by the appellant is not a part of WOE:G and hence it would not be eligible for the benefit of Sr. No. 234 and Sr. No. 201A of exemption notification No. 1/2017-CT (Rate), as amended.



18. In view of the above findings, we reject the appeal filed by appellant M/s. Suzlon Energy Ltd., against the Advance Ruling No. GUJ/GAAR/R/2022/16 dated 12.4.2022, passed by the Gujarat Authority for Advance Ruling.

  
( Rajeev Topno )  
Member (SGST)

  
(B V Siva Naga Kumari)  
Member (CGST)

Place: Ahmedabad

Date: 30.12.2022

